



Montana Fish, Wildlife & Parks

1400 South 19th Avenue
Bozeman, MT 59718

July 18, 2013

To: Governor's Office, Tim Baker, State Capitol, Room 204, P.O. Box 200801, Helena, MT 59620
Environmental Quality Council, State Capitol, Room 106, P.O. Box 201704, Helena, MT 59620
Dept. of Environmental Quality, Metcalf Building, P.O. Box 200901, Helena, MT 59620-0901
Dept. of Natural Resources & Conservation, P.O. Box 201601, Helena, MT 59620-1601
Montana Fish, Wildlife & Parks:

Director's Office	Parks Division	Lands Section	FWP
Commissioners			
Fisheries Division	Legal Unit	Wildlife Division	Design &
Construction			

MT Historical Society, State Historic Preservation Office, P.O. Box 201202, Helena, MT 59620
MT State Parks Association, P.O. Box 699, Billings, MT 59103
MT State Library, 1515 E. Sixth Ave., P.O. Box 201800, Helena, MT 59620
James Jensen, Montana Environmental Information Center, P.O. Box 1184, Helena, MT 59624
Janet Ellis, Montana Audubon Council, P.O. Box 595, Helena, MT 59624
George Ochenski, P.O. Box 689, Helena, MT 59624
Jerry DiMarco, P.O. Box 1571, Bozeman, MT 59771
Montana Wildlife Federation, P.O. Box 1175, Helena, MT 59624
Wayne Hurst, P.O. Box 728, Libby, MT 59923
Jack Jones, 3014 Irene St., Butte, MT 59701
Jack Atcheson, 2309 Hancock Avenue, Butte MT 59701
Beaverhead Conservation District, 420 Barrett Street, Dillon, MT 59725
U.S. Army Corp of Engineers, 1520 E 6th Avenue, Helena, MT 59601
U.S. Fish and Wildlife Service, 585 Shepard Way, Suite 1, Helena, MT 59601
U.S. Fish and Wildlife Service, 420 Barrett Street, Dillon, MT 59725
Big Hole Watershed Committee, Box 21, Divide, MT 59727
Montana Trout Unlimited, P.O. Box 7186, Missoula, MT 59807
Dan Vermillion, FWP Commissioner, 13 Kindsfather Dr., Livingston MT 59047
Earnest and Colleen Bacon, 2215 Fishtrap Creek Road, Wisdom, MT 59761
Dept. of Natural Resources and Conservation, 730 N. Montana Street, Dillon, MT 59725-9424
George Grant Chapter of Trout Unlimited, P.O. Box 563, Butte, MT 59703
Skyline Sportsmen, P.O. Box 173, Butte, MT 59703
Anaconda Sportsmen, 2 Cherry, Anaconda, MT 59711

Ladies and Gentlemen:

The enclosed draft Environmental Assessment (EA) has been prepared for the Partial Assignment of the Sourdough Creek Conservation Easement, a proposal to transfer administration of a 1.3 acre parcel of a conservation easement from Montana Fish, Wildlife and Parks to the Gallatin Valley Land Trust. This portion of the conservation easement is located at the Mystic Lake trailhead, adjoining the Gallatin National Forest about five miles south of Bozeman.

The purpose of the proposal is to provide for unified management of the parking area for the Mystic Lake trailhead. The remainder of the 230-acre conservation easement would continue to be administered by FWP.

The comment period for this EA runs from July 19 through August 16, 2013. Written comments can be mailed, emailed or delivered in person to the address below, and must be received no later than 5:00 p.m. on Friday, August 16. Please include your name and address with any comment.

Montana Fish, Wildlife & Parks – Region 3
Attn: Sourdough Conservation Easement - EA Comments
1400 S. 19th Avenue
Bozeman, MT 59718

Email: juliecunningham@mt.gov

If you have any questions about the proposal, please call our Lands Program Manager in Helena at (406) 444-4029.

Thank you for your interest.

Sincerely,
Patrick J. Flowers

A handwritten signature in black ink, appearing to be 'PJF' with a large, sweeping flourish underneath.

Region Three Supervisor

Attachment

ENVIRONMENTAL ASSESSMENT

PARTIAL ASSIGNMENT OF

SOURDOUGH CREEK CONSERVATION EASEMENT

Montana Fish, Wildlife and Parks
Region 3 – Bozeman
July 2013

I. INTRODUCTION

Over the past four decades, Montana Fish, Wildlife and Parks (FWP) has acquired 75 conservation easements from willing landowners across the state, covering 448,000 acres of fish and wildlife habitat and providing associated public recreational opportunities. Each conservation easement (CE) constitutes a permanent legal agreement between a landowner and FWP, guiding future management of the property to ensure compatibility with habitat values. Typically, a conservation easement provides for continued agricultural and forestry practices while limiting subdivision, residential development and most other commercial and industrial uses. A CE is recorded in official county records and runs with the title to the land, so that its terms continue to apply even when the property is sold, willed or otherwise conveyed to another owner. As holder of a conservation easement, FWP has the legal right and obligation to ensure that the landowner abides by the land-use restrictions written in the easement document.

The Sourdough Creek Conservation Easement was donated to FWP in 1980 by Robert A. Seise and covers 230 acres in the foothills of the Gallatin Mountain Range about five miles south of Bozeman. The CE includes a one mile portion of Bozeman Creek, which is also known as Sourdough Creek. In addition to its habitat conservation provisions, this CE provides for development of a trailhead parking area to serve public access to the adjoining National Forest System lands and the Mystic Lake trail system. Specifically, the CE contains the following language (Page 6, Paragraph Q):

“Nothing contained herein shall be construed to prevent Grantor from granting department an easement over and upon an area, not to exceed two acres, adjacent to the Mystic Lake Trailhead parking area, for the purpose of constructing and maintaining a parking area for use by the public.”

In the past several years the U.S.D.A. Forest Service, Gallatin National Forest (“Forest Service”), the Gallatin Valley Land Trust (GVLТ), Gallatin County and the owner of the Sourdough Creek property have worked cooperatively to improve the Mystic Lake trailhead parking area to better accommodate its high level of public use. As part of the project, ownership of a 1.3 acre parcel covered by the conservation easement was donated by the landowner to GVLТ in 2011. GVLТ had already received a donation of land on the adjacent 4.6 acres at the trailhead in 2007, and since then had conducted significant improvements to the trailhead area to

restore Bozeman Creek floodplain function and improve recreational access. Additionally, GVLТ granted a roadway/parking easement so that Gallatin County can conduct road maintenance activities.

II. DESCRIPTION OF PROPOSED ACTION

Montana Fish, Wildlife and Parks now proposes to assign administration of a 1.3 acre parcel of the 230 acre Sourdough Creek Conservation Easement to the Gallatin Valley Land Trust. This assignment would be accomplished by execution of a legal document titled “Partial Assignment of Conservation Easement.” Based on discussions among FWP, GVLТ and the Forest Service, FWP recognizes that the assignment of the conservation easement to GVLТ is expected to be followed by GVLТ’s assignment of the conservation easement (and donation of 5.9 acres of land) to the U.S., so it can be managed by the Forest Service.

The land underlying the 1.3 acre parcel has already been developed as a parking lot and roadway and is subject to a permanent easement (held by Gallatin County) for that purpose. The land has been graded and has virtually no vegetation or natural characteristics. As contemplated in the 1980 conservation easement, this small portion of the property is dedicated to this use to support public recreation on the Mystic Lake trailhead. In essence, FWP currently administers a CE on a public parking lot.

FWP’s assignment of the CE on the 1.3 acre parcel would not change the present use of the property. The area would still provide public parking and access for the Mystic Lake trail. Rather, assignment of the CE on this parcel would simply remove FWP’s oversight of the parking lot area, thereby facilitating unified ownership and management of the surrounding land in the trailhead area.

III. AUTHORITY AND DIRECTION

Section 87-1-209, Montana Code Annotated (MCA), authorizes FWP to acquire land for fish and wildlife habitat and associated public recreation, conferring the decision-making authority to the Montana Fish and Wildlife Commission (Commission) to acquire or dispose of interests in real property. The Montana Open-Space Land and Voluntary Conservation Easement Act (§76-6-101 *et seq.*, MCA) authorizes and enables public bodies and qualified private organizations to hold conservation easements, and §76-6-205, MCA, provides direction for the assignment of CE’s among these entities.

Implementation of the Proposed Action – the partial assignment of the conservation easement from FWP to GVLТ – represents a transfer of a legal interest in land, and requires the approval by the Commission. Following the completion of the public comment period on this environmental assessment, FWP anticipates preparing a decision notice with a recommended action. If that recommended action is to move forward with the partial assignment, FWP would subsequently present the project to the Commission for a final decision.

IV. PROJECT LOCATION

The Sourdough Creek Conservation Easement is located in Gallatin County in the foothills of the Gallatin Mountain Range about five miles south of Bozeman and encompasses 230 acres within Sections 7 and 8, Township 3 South, Range 6 East. The 1.3 acre parcel under consideration for the CE assignment is located within the NE1/4 of Section 7 (see maps/photos on pages 8 - 10).

V. PURPOSES, BENEFITS AND NEED FOR THE PROPOSED ACTION

The purposes of the Proposed Action are: (1) to remove FWP from oversight of 1.3 acres of the Mystic Lake trailhead parking lot; (2) to help the transfer of 5.9 acres of land at the Mystic Lake trailhead from the Gallatin Valley Land Trust to the Forest Service; and (3) to provide for unified ownership and management of the trailhead area.

GVLТ currently owns a 5.9 acre tract at the trailhead (which includes the 1.3 acre CE property), and desires to donate all of this land to the U.S. so that it can be managed by the Forest Service. The Gallatin National Forest currently manages thousands of acres of adjoining land, including the Mystic Lake trail. The Forest Service would like to accept ownership of the GVLТ land; however, agency and U.S. Department of Justice policy is to clear any title encumbrances (rights held by third parties) prior to accepting ownership.

In this case, once FWP assigns the conservation easement on the 1.3 acres to the GVLТ, GVLТ can in turn assign this portion of the conservation easement to the Forest Service along with the fee title to the 5.9 acres that GVLТ wishes to convey to the Forest Service. This would meet Forest Service policy; by having GVLТ transfer all rights in the 1.3 acres to the Forest Service, there will no longer be a third party title encumbrance. The conservation easement will remain on the property and will be administered by the Forest Service. This outcome is consistent with Montana law (§70-17-111(2), MCA), which states, "A conservation easement may not be extinguished by taking fee title to the land to which the conservation easement is attached."

The overall benefit of the Proposed Action is that the immediate trailhead area will no longer have FWP involvement in the conservation easement, nor will it have GVLТ land ownership. Rather, ownership of the entire parking lot area and this 1.3 acre portion of the conservation easement will be held by the Forest Service, thus establishing unified management control of this popular trailhead area and the adjoining public land. This will provide for more responsive management to any public use issues that may arise, and will release FWP and GVLТ from administrative obligations and costs to manage portions of a developed parking area.

VI. DESCRIPTION AND DISCUSSION OF ALTERNATIVES TO THE PROPOSED ACTION

1. Proposed Action

The Proposed Action is for Montana Fish, Wildlife and Parks to assign administration of a 1.3 acre portion of the Sourdough Creek Conservation Easement to the Gallatin Valley Land Trust, a nonprofit conservation organization that is dedicated to open space

preservation and that is qualified under state and federal law to hold conservation easements. Based on discussions among FWP, GVLТ and the Forest Service, FWP recognizes that the assignment of the conservation easement to GVLТ is expected to be followed by GVLТ's assignment of the conservation easement (and donation of 5.9 acres of land) to the Forest Service.

As a result, this environmental assessment considers the impacts of the initial conservation easement assignment to GVLТ and the subsequent assignment of the conservation easement and transfer of 5.9 acres of land to the Forest Service.

The remaining 229 acres of the Sourdough Creek Conservation Easement will continue to be administered by Montana Fish, Wildlife and Parks for the purposes of habitat conservation and open space preservation. The proposed action will have no effect on the management of this acreage.

2. No-Action Alternative

Under the No-Action alternative, FWP would not pursue assignment of the 1.3 acre portion of the Sourdough Creek Conservation Easement to GVLТ and, as a result, GVLТ would not subsequently transfer this CE to the Forest Service. FWP would retain oversight of the conservation easement on 1.3 acres of the parking lot in the vicinity of the Mystic Lake trailhead. With the No-Action alternative, the proposed GVLТ donation of 5.9 acres to the Forest Service would likely not proceed if FWP retains administration of the conservation easement on the 1.3 acre parcel that is a portion of these 5.9 acres.

VII. EVALUATION OF IMPACTS ON THE PHYSICAL ENVIRONMENT

1. Land Resources

Impact of Proposed Action: There are no anticipated impacts on land resources because the 1.3 acre parcel has been developed as a parking lot, and this would not change under the Proposed Action or the No-Action Alternative. The land would remain in service as a vehicle parking area for persons using the Mystic Lake trailhead.

2. Air Resources

Impact of Proposed Action: Neither the Proposed Action nor the No-Action Alternative would affect air resources because, under either scenario, the road and parking area would remain open to public and used for vehicle parking area for persons hiking the Mystic Lake trail. The issue of which party administers the conservation easement on the 1.3 acre parcel would not affect current or future levels of public use of the area.

3. Water Resources

Impact of Proposed Action: Neither the Proposed Action nor the No-Action Alternative would affect water resources because, under either scenario, the road and parking area

would remain open to the public and used for vehicle parking for persons hiking the Mystic Lake trail.

A small irrigation ditch (the “1868 Ditch”) runs across the parcel, and its use will not change as a result of the Proposed Action. Sourdough Creek and the Lower Williams Ditch run through the 5.9 acres owned by GVLТ that is expected to be transferred to the Forest Service. As part of the existing parking lot development, a berm was installed to minimize the likelihood that runoff from the parking lot would enter Sourdough Creek, and GVLТ moved the access road away from the creek and restored the floodplain with native vegetation. Use and access to Bozeman Creek and the Lower Williams Ditch will not change with the Proposed Action.

4. Vegetation Resources

Neither the Proposed Action nor the No-Action Alternative would affect vegetation resources. Under either scenario, the road and parking area – as they have already been developed and cleared of vegetation – would remain open to public use for vehicle parking for persons hiking the Mystic Lake trail.

5. Fish/Wildlife Resources

While the Mystic Lake trailhead area is rich in wildlife resources (including elk, moose, black bear, mule deer, many nongame species and occasional wolf), the parking area and trailhead have been in a developed state for many years. The issue of which entity administers the conservation easement on the 1.3 acre parcel will not affect site development, current or future levels of public use, nor habitat characteristics or wildlife use of the area. As a result, neither the Proposed Action nor the No-Action Alternative would affect wildlife resources.

During development of the parking area and the associated improvement of the roadway in this vicinity, the access road was moved away from Sourdough (Bozeman) Creek and the zone between the road and the creek was revegetated to provide a sediment buffer and to improve habitat of this small trout stream. This improvement will be maintained under either alternative, so neither the Proposed Action nor the No-Action Alternative will affect fishery resources.

VIII. EVALUATION OF IMPACTS ON THE HUMAN ENVIRONMENT

1. Noise/Electrical Effects

Impact of Proposed Action and No-Action Alternative: There would be no impact.

2. Land Use

Impact of Proposed Action and No-Action Alternative: There would be no change from current land use of the 1.3 acre parcel.

The Proposed Action would facilitate transfer of GVLТ's 5.9 acres of private land to the Forest Service (as explained previously in this environmental assessment); however, the management of this land would remain the same as it is now. Some of this land is part of the trailhead/parking site and some is an open space buffer area. Whether under continued GVLТ ownership or under transfer to Forest Service ownership, these land uses are expected to remain the same.

3. Risk/Health Hazards

Impact of Proposed Action and No-Action Alternative: There would be no change from current conditions because land uses and public use levels will remain the same.

4. Community Impacts

Impact of Proposed Action: The community impacts of the Proposed Action would be positive. By consolidating management of the Mystic Lake trailhead under the Forest Service, this would relieve GVLТ of administrative responsibilities for 5.9 acres, and thus free GVLТ resources to address other community conservation and trail projects.

5. Public Services/Taxes

Sourdough Canyon Road, a Gallatin County road, extends through the property. Also, through an easement granted to it by GVLТ in 2011, the County accepted maintenance responsibility for the parking lot, in recognition of its importance for public use of the Mystic Lake trailhead. Currently, GVLТ pays property taxes of approximately \$775 annually on its 5.9 acres. If this land is later transferred to the Forest Service by GVLТ, GVLТ will not make this tax payment. The acreage will be figured into the Forest Service's payment in lieu of taxes to Gallatin County, but the overall revenue realized by Gallatin County will be slightly reduced.

6. Aesthetics/Recreation

Impact of Proposed Action: The proposed action would maintain the status quo in terms of recreational use of the Mystic Lake trailhead. Over time, unified site management by the Forest Service should enhance responsiveness to public needs in the event any management issues arise for the parking lot/trailhead area.

7. Cultural/Historic Resources

There would be no impact on cultural or historic resources under either of the alternatives, as site development of the parking lot/trailhead has already occurred.

IX. SUMMARY EVALUATION OF SIGNIFICANCE

The Proposed Action will consolidate land administration at the Mystic Lake trailhead with the Forest Service, but will otherwise have no environmental impacts on the site. This action will continue the status quo of public use of the parking lot and trailhead area. The site will not experience adverse environmental impacts, nor will it have adverse cumulative or secondary impacts, nor will it affect any unique, endangered, fragile, or limited environmental resources.

X. EVALUATION OF NEED FOR AN EIS

This environmental assessment (EA) has not identified any negative impacts from the proposed action, so an environmental impact statement is not required. This EA is the appropriate level of review.

XI. PREFERRED ALTERNATIVE AND PUBLIC INVOLVEMENT

FWP's preferred alternative is to implement the Proposed Action as described in Section II of this environmental assessment. Public comment on this EA will be taken from the July 19, 2013, release date of this EA through August 16, 2013.

Comments may be delivered by mail, in person or email:

Montana Fish, Wildlife & Parks – Region 3
Attn: Sourdough Conservation Easement - EA Comments
1400 S. 19th Avenue
Bozeman, MT 59718

Email: juliecunningham@mt.gov

XII. DECISION-MAKING PROCESS

After the close of the public comment period, the Supervisor of FWP Region 3 (Bozeman) will evaluate the comments and prepare a Decision Notice that reviews and responds to public comments, and recommends whether or not FWP will proceed with the proposed action. The Decision Notice will be provided to all persons who commented on the proposal, and will be posted on the FWP website at <http://fwp.mt.gov/news/publicNotices>. The Montana Fish and Wildlife Commission will make a final decision on whether or not to accept the Supervisor's recommendation.

XIII. CONTACT INFORMATION FOR PERSONS PREPARING THIS EA

Hugh Zackheim, Lands Program Manager, Montana Fish, Wildlife & Parks, Helena
Phone: 406-444-4029; Email: hzackheim@mt.gov

XIV. OTHER GROUPS OR AGENCIES CONTACTED OR WHICH MAY HAVE OVERLAPPING JURISDICTION

U.S. Forest Service, Gallatin Valley Land Trust, Gallatin County, City of Bozeman

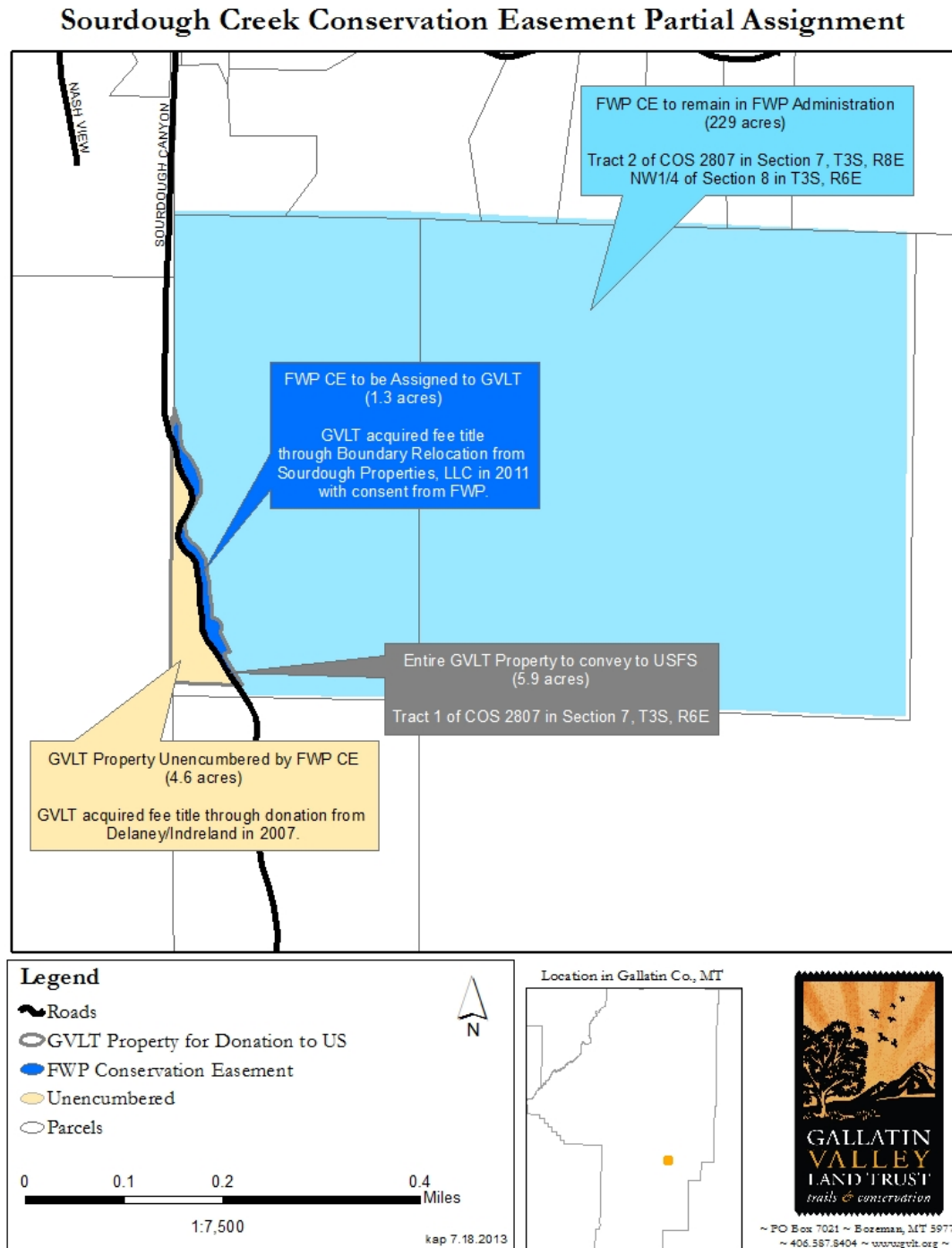
Site Aerial Photo



Showing parking area along Sourdough Canyon Road (Forest Service Road #979), with timbered slopes to the east and Bozeman Creek to the west of the road, all located in the southwest portion of the Sourdough Creek Conservation Easement. The parking area is already developed, and the vegetation on the adjoining land remains as shown in this aerial photo. This vegetation will be unaffected by the proposed action.

Ownership Map and Location Maps

The center portion of the map points out the narrow 1.3 acre parcel for which administration of the conservation easement is proposed to be transferred from FWP to GVL. A Gallatin County location map is also provided at bottom.



Photos of the Parking Lot and Trailhead Area

